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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1944

No. 484

ANTHONY JOSEPH,

Petitioner,

vs.

THE UNITED STATES OF AMERICA.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT AND BRIEF IN SUPPORT THEREOF.

STROTHER P. WALTON,
RALPH ROBINSON,
Counsel for Petitioner.

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Petition

To the Honorable the Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States:

The petition of Anthony Joseph respectfully submits to this Honorable Court the following:

A

Statement of Matter Involved

An information was filed against petitioner in the District Court of the United States for the Southern District of California, Northern Division, on June 31, 1943. The in-

formation contained two counts. Each count charged petitioner with a violation of the Act of Congress of June 25, 1938, known as the Federal Food, Drug, and Cosmetic Act (52 Statutes at Large, 1040; 21 U. S. C., 331(a)). Each count charged petitioner with unlawfully delivering into interstate commerce a consignment of food within the meaning of said Act and charged that said food, when delivered for introduction into interstate commerce, was adulterated within the meaning of said Act, in that it consisted, in whole or part, of a filthy substance (R. 3-7).

The defendant pleaded not guilty to each count. A jury trial was had on the 9th day of November, 1943, and the defendant was found guilty on both counts (R. 18). A motion for a new trial was made and denied (R. 27). An appeal was taken to the United States Circuit Court of Appeals for the Ninth Circuit, and the judgment affirmed (R. 53).

Three days before the trial, on November 6, 1943, a stipulation was entered into by H. A. Savage, the attorney representing the defendant at that time, and the Assistant United States Attorney, representing the government, wherein it was stipulated, among other things, that the product which the defendant introduced into interstate commerce was a food (R. 8-15).

Three days later and on the day of the trial, H. A. Savage moved the substitution of Strother P. Walton and Ralph Robinson as attorneys for the defendant in lieu of himself and G. L. Aynesworth, which motion was granted, Walton and Robinson being present in Court, and who then proceeded to act as counsel for the petitioner (R. 43).

Immediately following the substitution, and prior to the commencement of the trial, a motion was made by the petitioner in open Court to be relieved of those portions of the stipulation wherein it was admitted in connection with both counts of the information that the prune concentrate juice,

which was the product shipped by the petitioner into interstate commerce, was a food. This request was made to the Court by defendant's counsel, who stated that the consignee at Hartford, Connecticut, did not use the prune concentrate juice in the form in which it was shipped and, therefore, it could not be classified as a food. (R. 44).

Defense counsel also stated that this product was shipped to a beverage manufacturer to be later reprocessed and eventually made into a finished food product by the consignee (R. 45).

Defense counsel further contended that the stipulation was entered into by the petitioner here, through the attorneys who were then representing him, for the sole purpose of saving the expense to the government of bringing from New York and Connecticut several government chemists who had analyzed one of the shipments at those locations, and it was never the petitioner's understanding that he was admitting that the product was a finished food suitable for human consumption.

The government's attorneys objected to the request of the petitioner, and at the conclusion of the argument of the parties, the Court denied the motion of the petitioner (R. 46).

Thereupon the matter proceeded to trial before a jury and the only evidence offered by the government to prove that the product which was shipped by the petitioner into interstate commerce was a food, was the stipulation referred to (R. 46).

Motion for a new trial was made after the jury's verdict of guilty. Upon the motion for a new trial, the petitioner again urged the error of the District Court in failing to relieve him of the portions of the stipulation which admitted the product was a food, and his affidavit in support of the motion set forth that the raw material from which

the product was made consisted of off-grade prunes, purchased by him from the United States Department of Agriculture, and that the said prunes were purchased with the understanding that they were to be made into by-products, and that the said culled prunes were treated by the petitioner in a series of processes, which reduced them to a heavy syrupy substance of about the consistency of molasses (R. 22-23).

That the product was then consigned to Stoddard Bros., of Hartford, Connecticut, who, upon receiving same, would subject the product to a number of pasteurizing and filtering and other manufacturing processes; that the product, in the form as shipped by the petitioner, was never sold or dispensed as a food or beverage (R. 23-24).

That the product when it arrived in Hartford, Connecticut, was ultimately sold for distillation purposes, and never was used as a food (R. 24).

The petitioner further stated in his affidavit that his understanding of the stipulation was that the same was entered into to avoid the necessity of bringing government witnesses from Connecticut, and that he had no intention of stipulating that the product which he shipped into interstate commerce was a food within the meaning of the Federal Food, Drug, and Cosmetic Act, and that he did not know that said stipulation would be so construed (R. 22).

At the argument on motion for new trial there was received in evidence two defendant's exhibits, the same being one bottle containing a sample of the product shipped by the defendant and the other bottle being a finished prune juice, admittedly a food, which was furnished to the Court to show the lack of similarity to a food of the product shipped by the defendant.

The motion for new trial was denied, and the appeal to the Circuit Court followed.

Upon the appeal in the Circuit Court the petitioner again urged the error of the trial Court in refusing to relieve him of that portion of the stipulation which admitted the product was a food.

B

Jurisdiction

The jurisdiction of this Court is invoked under Section 240 of the Judicial Code, as amended (U. S. C., 1934 edition, title 28, section 347).

C

Questions Presented

The first question presented is whether or not the trial Court abused its discretion and violated the personal rights of the defendant and petitioner herein in refusing to relieve him of that portion of the stipulation which forced him to go to trial admitting the corpus of the offense, to-wit, that the product which he had introduced into interstate commerce was a food.

The second question involved is whether a defendant can be convicted of a criminal offense, where the corpus delicti of the same was proven by the uncorroborated stipulation of the defendant that the product which he shipped into interstate commerce was a food; no other evidence that the product was a food being offered by the government.

D

Reasons for Allowance of the Writ

The District Court has decided a substantial question of federal law of general importance, and the Circuit

Court affirmed the same, which has not been, but should be, settled by this Court.

There is here presented to this Court for the first time the question of whether or not a defendant in a criminal action can be convicted where the only evidence of the corpus delicti of the crime charged, was established by a stipulation entered into by the defendant's attorney with the attorneys for the prosecution; the defendant's attorneys who entered into the stipulation having been discharged before the trial and other attorneys substituted.

WHEREFORE, petitioner prays that a writ of certiorari be issued to review the judgment of the United States Circuit Court of Appeals for the Ninth Circuit in the above entitled cause, and that said judgment be reversed, and that petitioner may have such other and further relief in the premises as to this Honorable Court may seem meet and proper.

Respectfully submitted,

STROTHER P. WALTON,
RALPH ROBINSON,
Attorneys for Petitioner,
Pacific Southwest Building,
Fresno, California.

September 16, 1944.